

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 173 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

V.S. GOKHALE

Versus

STATE OF GUJARAT

Appearance:

MR JF SHAH for Petitioners

SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 05/07/96

ORAL JUDGEMENT

This is an application under Article 226 of the Constitution of India filed by four petitioners. Petitioners nos 1 and 2 viz. Kum. V.S. Gokhale and Smt. M.L.Sawant were working as Assistant Superintendents while petitioners nos 3 and 4 viz. Kum.N.V>Mankikar and Smt. S.N.Shaikh were working as Health Visitors in various Institutions at Surat. As per

the policy of the respondent Government, the nurses are provided messing allowance and said messing allowance is awarded to them by passing various Government Resolutions from time to time. Accordingly, all the trained nurses get messing allowance as per the Government Resolutions. It is the case of the petitioners that as they were transferred and posted respectively as Assistant Superintendents and Health Visitors at Surat, their messing allowance was stopped by respondents nos 1 and 2 though the same was paid to similarly situated other trained nurses..Hence they have come to this court to direct the respondents to grant messing allowance from the date it was discontinued.

2. The notice of this petition was served upon the respondents but no reply affidavit is filed by either of the two respondents opposing the claim of the petitioners. I have heard Mr. J.F. Shah the learned advocate for the petitioners at length . Neither the respondents nor the learned advocate for the respondent is present.

3. The petitioners have produced a Government Resolution bearing No. NUR. 1069-897 Chh dated 13.12.72 as Annexure. B to the present petition. Said Resolutions mentions that increase in the messing allowance to various categories of Nursing personnel in the Medical and Public Health/Establishment(Medical Department and Ayurvedic Department) has been considered and the existing rate of Rs. 45/- p.m. was increased to Rs. 60/- p.m. from 1.4.1972. Therefore the said Government Resolution makes it clear that Nursing personnel are entitled to get messing allowance. There is no dispute that the petitioners are Nursing personnel.

4. The petitioners are posted at Surat by way of transfer. No doubt the petitioners nos 1 and 2 are designated and posted as Assistant Superintendents in the Health Visitors School at Surat. But merely because they are posted in that capacity it could not be said that they have ceased to be Nursing personnel and that they are not entitled to claim and get the messing allowance . The petitioners have averred in their petition that earlier, SCA no. 5374/84 was filed in this court by the Assistant Superintendents of the Health Visitors' School and Health Nursing School, Surat and when the said petition came up for hearing, the respondents had made a statement before the court through their advocate that the question of paying messing allowance to Assistant Superintendents to the school and Health oNursing School was under consideration of the Government and that the

Government would take a decision shortly. In view of the said statement being made, said petition was withdrawn by the petitioners and thereafter on 4.4.83 the four petitioners in that petition were granted messing allowance. The action of the respondent Government in allowing messing allowance only to the persons who had gone to the court not giving the same to the similarly situated other persons is unreasonable and arbitrary. When the decision of allowing messing allowance to Assistant Superintendents is once accepted, it is not open for the Government to allow messing allowance only to those persons who had come before the court and not to others. In the case of State of Kerala vs. T.P. Roshana reported in AIR 1979 SC 746 said attitude of the Government is deprecated by making the following observations:

"Had we left the judgment of the High Court in the conventional form of merely quashing the formula of admission the remedy would have aggravated the malady-confusion, agitation, paralysis. The root of the grievance and the fruit of the writ are not individual but collective and while the 'adversary system' makes the Judge a mere umpire, traditionally speaking the community orientation of the judicial function so desirable in the Third World remedial jurisprudence, transforms the court's power into affirmative structuring of redress so as to make it personally meaningful and socially relevant. Frustration of invalidity is part of the judicial duty, fulfilment of legality is complimentary. This principle of affirmative action is within our jurisdiction under Art. 136 and Art.32 and we think the present case deserve its exercise."

5. Thus the claim of the petitioners nos 1 and 2 and other similarly situated Assistant Superintendents must be allowed by the respondent Government forthwith in view of its own decision taken in respect of the petitioners who had filed SCA No. 5374/83 by this Court.

6. As regards the petitioners nos 3 and 4 the Government has issued a letter dated 12.9.77. Said letter clearly says that Health Visitors are also entitled to get messing allowance. Merely because the petitioners nos 3 and 4 are working in Health Visitors Schools and Public Health Nursing Schools, they do not cease to be nursing personnel. They are entitled to get messing allowance as per Memorandum dt. 9.9.83 issued by the Government. Therefore, this petition will have to be

allowed. Respondents are directed to pay arrears of messing allowance to all the four petitioners from the date the same was not paid to them till the date of their retirement or ceasing to be Nursing personnal. In the circumstances, parties are directed to bear their own costs. Rule made absolute.

(S.D.Pandit.J)